

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LATIA ALEXANDER, individually as heir of
ISAIAH T. WILLIAMS, and in her capacity as
Special Administrator of the Estate of ISAIAH T.
WILLIAMS,

Case No.: 2:24-cv-00074-APG-NJK

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, a political subdivision of the
State of Nevada; KERRY KUBLA, in his
individual capacity; BRICE CLEMENTS, in his
individual capacity; ALEX GONZALES, in his
individual capacity; RUSSELL BACKMAN, in
his individual capacity; JAMES
ROTHENBURG, in his individual capacity;
JAMES BERTUCCINI, in his individual
capacity; and DOES I-XX, inclusive,

Defendants.

KERRY KUBLA,

Counterclaimant,

vs.

LATIA ALEXANDER in her capacity as Special
Administrator of the Estate of ISAIAH T.
WILLIAMS,

Counterdefendant.

STIPULATED PROTECTIVE ORDER

Plaintiffs seek to obtain, inspect and copy documents and/or things which Defendants Las
Vegas Metropolitan Police Department ("LVMPD"), Kerry Kubla, Brice Clements, Alex

1 Gonzales, Russell Backman, James Rothenburg and James Bertuccini (“LVMPD Defendants”),
2 contend contain private and sensitive information, confidential information of LVMPD, its officers
3 and employees, its internal investigative and administrative actions, and other confidential
4 information. Pursuant to an agreement by the Parties, the Court hereby enters the following Order
5 for Protection (“Protective Order”):

6 **TERMS OF PROTECTIVE ORDER**

7 **I. DEFINITIONS**

8 The following definitions apply to the Protective Order:

9 1. Party. Any party to this action, including all of its officers, directors, employees,
10 consultants, Experts, and Outside Counsel. Party, as used in this Protective Order, shall also refer
11 to LVMPD, and its officers, agents and employees.

12 2. Disclosure or Discovery Material. All items or information, regardless of the
13 medium or manner generated, stored, or maintained (including, among other things, testimony,
14 transcripts, or tangible things) that are produced or generated in disclosures or responses to
15 discovery in this matter.

16 3. “Confidential” Information or Items. Information (regardless of how generated,
17 stored or maintained) or tangible things that qualify for protection under the law enforcement
18 investigative and/or official information privileges, or that contain Criminal History Information,
19 personal information regarding individuals including Social Security Numbers, dates of birth and
20 information which a person would have a reasonable expectation of privacy. Confidential
21 information shall also include the parties’ contact information disciplinary action of non-party
22 employees, and medical information.

23 4. Receiving Party. A Party that receives Disclosure or Discovery Material or
24 Confidential Information from a Producing Party.

25 5. Producing Party. A Party or third-party that produces Disclosure or Discovery
26 Material or Confidential Information in this action.

1 **IV. DESIGNATING PROTECTED MATERIAL**

2 1. Manner and Timing of Designations. Except as otherwise provided herein, or as
3 otherwise ordered, material that qualifies for protection under this Order must be clearly
4 designated before it is disclosed or produced. Designations in conformity with this Order require:

5 a. For information in documentary form. That the Producing Party
6 shall affix the legend “Confidential” on each page that contains Protected Material. If only a
7 portion or portions of the material on a page qualifies for protection, the Producing Party also must
8 clearly identify the protected portion(s) (*e.g.*, by making appropriate makings in the margins or
9 redacting protected portions). A Producing Party that makes original documents or materials
10 available for inspection need not designate them for protection until after the inspecting Party has
11 indicated which material it would like copied and produced. During the inspection and before the
12 designation, all of the material made available for inspection shall be deemed “Confidential.”
13 After the inspecting Party has identified the documents it wants copied and produced, the
14 Producing Party must determine which documents, or portions thereof, qualify for protection under
15 this Order, and, before producing the specified documents, the Producing Party must affix the
16 appropriate legend on each page that contains Protected Material. If only a portion or portions of
17 the material on a page qualifies for protection, the Producing Party also must clearly identify the
18 protected portion(s) (*e.g.*, by making appropriated markings in the margins or by redacting
19 protected portions).

20 b. For testimony given in deposition or in other pretrial or trial
21 proceedings. That before the close of the deposition, hearing, or other proceeding, the Party or
22 non-party offering or sponsoring the testimony shall identify on the record all protected testimony
23 and further specify any portions of the testimony that qualify as “Confidential.” When it is
24 impractical to identify separately each portion of testimony that is entitled to protection, the Party
25 or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the
26 deposition or proceeding is concluded) a right to have up to thirty (30) days to identify the specific
27 portions or the testimony as to which protection is sought. Only those portions of the testimony

1 that are appropriately designated for protection under the standards set forth herein within the thirty
2 (30) days shall be covered by the provisions of this Protective Order. Upon request of a
3 Designating Party, transcript pages containing Protected Material must be separately bound by the
4 court reporter, who must affix to the top of each such page the legend "Confidential" as instructed
5 by the Party or non-party offering or sponsoring the witness or presenting the testimony.

6 c. For information produced in some form other than documentary,
7 and for any other tangible items. That the Producing Party affix in a prominent place on the
8 exterior of the container or containers in which the information or item is stored the legend
9 "Confidential." If only portions of the information or item warrant protection, the Producing Party,
10 to the extent practicable, shall identify the protected portions.

11 2. Inadvertent Failure to Designate. Inadvertent failure to identify documents or
12 things as "Confidential" pursuant to this Protective Order shall not constitute a waiver of any
13 otherwise valid claim for protection, provided that the provisions of this paragraph are satisfied.
14 If the Designating Party discovers that information should have been but was not designated
15 "Confidential" or if the Designating Party receives notice that would enable the Designating Party
16 to learn that it has disclosed such information, the Designating Party must immediately notify all
17 other parties. In such event, within thirty (30) days of notifying all other Parties, the Designating
18 Party must also provide copies of the "Confidential" information designated in accordance with
19 this Protective Order. After receipt of such re-designated information, the "Confidential"
20 information shall be treated as required by this Protective Order, and the Receiving Party shall
21 promptly, but in no event more than fourteen (14) calendar days from the receipt of the re-
22 designated information, return to the Designating Party all previously produced copies of the same
23 unlegended documents or things. The Designating Party and the Parties may agree to alternative
24 means. The Receiving Party shall receive no liability, under this Protective Order or otherwise,
25 for any disclosure of information contained in unlegended documents or things occurring before
26 the Receiving Party was placed on notice of the Designating Party's claims of confidentiality.
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1 **V. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 1. Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
3 confidentiality designation must do so in good faith and must begin the process by conferring with
4 counsel for the Designating Party. The challenging Party must give the Designating Party an
5 opportunity of not less than ten (10) calendar days to review the designated material, to reconsider
6 the circumstances, and, if no change in the designations is offered, to explain in writing the basis
7 for the confidentiality designation.

8 2. Judicial Intervention. A Party that elects to press a challenge to a confidentiality
9 designation after considering the justification offered by the Designating Party may file and serve
10 a motion that identifies the challenged material and sets forth in detail the basis for the challenge.
11 Until the Court rules on the challenge, all parties shall continue to afford the material in question
12 the level of protection to which it is entitled under the Producing Party's designation. The burden
13 to establish the propriety of a confidentiality designation shall be on the Designating Party.

14 **VI. ACCESS TO AND USE OF PROTECTED MATERIAL**

15 1. Basic Principles. A Receiving Party may use Protected Material that is disclosed
16 or produced by another Party or by a third-party in connection with this case solely for the limited
17 purposes of prosecuting, defending, attempting to settle, or settling this action. Such Protected
18 Material may be disclosed only to the categories of persons and under the conditions described in
19 the Protective Order. Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons authorized under
21 this Protective Order.

22 2. Disclosure of "Confidential" Information or Items. Unless otherwise ordered by
23 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
24 information or item designated Confidential only to:

1 a. The Parties to this action and the Receiving Party's Outside Counsel
2 of record in this action, as well as employees of said Counsel to whom it is reasonably necessary
3 to disclose the information for this litigation. Counsel of Record shall be responsible for advising
4 all of their staff of the existence of, and their confidentiality obligations under, the Protective
5 Order, and shall be responsible for any non-compliance with the Protective Order by members of
6 their staff that have not signed an agreement to be bound by the Protective Order;

7 b. The officers, directors, and employees of the Receiving Party to
8 whom disclosure is reasonably necessary for this litigation and who have signed or have agreed
9 under oath and on the record to be bound by the "Agreement to Be Bound by Protective Order"
10 (Exhibit A);

11 c. Experts of the Receiving Party to whom disclosure is reasonably
12 necessary for this litigation and who have signed or have agreed under oath and on the record to
13 be bound by the "Agreement to Be Bound by Protective Order" (Exhibit A);

14 d. The Court and its personnel, including (without limitation) jurors;

15 e. Court reporters, their staffs, and Professional Vendors to whom
16 disclosure is reasonably necessary for this litigation;

17 f. During their depositions or at trial, witnesses in the action to whom
18 disclosure is reasonably necessary. Witnesses will not be permitted to retain copies of Protected
19 Material unless they have signed or agreed under oath and on the record to be bound by the
20 "Agreement to Be Bound by Protective Order" (Exhibit A). Upon request of a Designating Party,
21 pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
22 must be separately bound by the court reporter and may not be disclosed to anyone except as
23 permitted under this Protective Order; and

24 g. The author of the document or the original source of the information
25 and recipients or addressees in the normal course of business.

26 Notwithstanding the preceding of this paragraph VI(2), a Party that has produced its, his
27 or her own Protected Material may disclose such Protected Material to any persons, with or without

any conditions placed upon such disclosure, as the Party deems appropriate.

3. Trial and Dispositive Motion Disclosure: For the purpose of trial and/or dispositive motions, the parties acknowledge that a “strong presumption in favor of access” exists. A party seeking to seal a judicial record at trial and/or the dispositive motions stage bears the burden of establishing “compelling reasons” by “articulating compelling reasons supported by specific factual findings,” that outweigh the public policies favoring disclosure.¹

4. Disclosure of Possession of Confidential Information. All persons described in paragraph VI above shall not under any circumstances sell, offer for sale, advertise, or publicize either the Confidential Information or the fact that such persons have obtained Confidential Information.

VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “Confidential” the Receiving Party must so notify the Designating Party, in writing (by fax or email if possible) immediately and in no event more than seven (7) calendar days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. The Receiving Party also must within ten (10) calendar days inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order and deliver to such party a copy of this Protective Order. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its Confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court. Once notice is given, and five business days have elapsed, the receiving party shall have no further liability for disclosure pursuant to a subpoena or its equivalent.

¹ See Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

1 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 3 Material to any person or in any circumstance not authorized under this Protective Order, the
 4 Receiving Party must immediately and within not more than seven (7) calendar days: (a) notify in
 5 writing (using best efforts to use email or fax) the Designating Party of the unauthorized
 6 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
 7 person or persons to whom unauthorized disclosures were made of all the terms of the Protective
 8 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
 9 Be Bound” (Exhibit A). The Receiving Party shall promptly notify the Designating Party of the
 10 results of its efforts with regards to (b), (c), and (d) herein. After a good faith meet and confer
 11 effort to resolve and remaining disputes concerning compliance with this paragraph, and Party,
 12 Receiving Party or Designating Party may seek relief from this Court for non-compliance with this
 13 provision. Said relief may include, but is not limited to, preclusion of the Receiving Party’s use
 14 in this litigation of the Protected Material that was disclosed contrary to this Protective Order, or
 15 any other sanction deemed appropriate by the Court.

16 **IX. PUBLICLY AVAILABLE OR PREVIOUSLY POSSESSED INFORMATION**

17 The restrictions in the preceding paragraphs regarding disclosure or Protected Material do
 18 not and shall not apply to information or material that: was, is, or becomes public knowledge in a
 19 manner other than by violation of the Protective Order, is acquired by the non-designating party
 20 from a third-party having the right to disclose such information or material; or was lawfully
 21 possessed by the non-designating party before the date of this Protective Order. The Designating
 22 Party shall act in good faith to notify the Receiving Party of any change in circumstances that
 23 renders Confidential Information or Items no longer Confidential within a reasonable time period
 24 after the change becomes known to the Designating Party.

25 **X. FILING PROTECTED MATERIAL**

26 See order issued concurrently herewith.

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10 **XI. FINAL DISPOSITION**

11 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
12 calendar days of a written request, after the final termination of this action, each Receiving Party
13 must return all Protected Material to the Producing Party. As used in this subdivision, “all
14 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
15 reproducing or capturing any of the Protected Material. With permission in writing from the
16 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
17 of returning it. If the Designating Party does not give permission in writing to destroy the Protected
18 Material in lieu of returning it, the Designating Party shall pay for the time and cost of staff to
19 locate the material and return it. Notwithstanding this provision, Counsel are entitled to retain an
20 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
21 attorney work product, even if such materials contain Protected Material. Additionally, no Party
22 shall be required to conduct e-mail searches to locate the existence of Protected Material that may
23 have been transmitted electronically in compliance with this Order. Any such archival copies that
24 contain or constitute Protected Material remain subject to this Protective Order as set forth herein.
25 In the event of an appeal, “Final Disposition” shall not occur until the conclusion of all appeals.

26 **XII. ADDITIONAL PROVISIONS**

- 27 1. Modification. The Parties may modify this Protective Order by written agreement,

1 subject to approval by the Court. The Court may modify this Protective Order.

2 2. Right to Assert Other Objections. This Protective Order does not affect or waive
3 any right that any Party otherwise would have to object to disclosing or producing any information
4 or item on any ground not addressed in this Protective Order. Similarly, this Protective Order does
5 not affect or waive any Party's right to object on any ground to use in evidence any of the material
6 covered by this Protective Order.

7 3. Privileges Not Waived. This Protective Order does not affect or waive any
8 applicable privilege or work product protection, or affect the ability of a Producing Party to seek
9 relief for an inadvertent disclosure of material protected by privilege or work product protection.

10 4. Third Party Protections. Any witness or other person, firm, or entity from which
11 discovery is sought may be informed of and may obtain the protection of this Protective Order by
12 written notice to the Parties' respective counsel or by oral notice at the time of any deposition or
13 similar proceeding.

14 5. Obligations to Third Parties. Nothing herein shall operate to relieve any Party or
15 non-party from any pre-existing confidentiality obligations currently owed by any Party or non-
16 party to any other Party or non-party.

17 6. Retention of Completed "Acknowledgment and Agreement to Be Bound" Forms
18 (Exhibit A). Completed "Acknowledgement and Agreement to Be Bound" Forms (Exhibit A)
19 ("form") shall be maintained by the Party that obtained the completed form pursuant to this
20 Protective Order. The Party retaining the completed form shall produce the form to resolve any
21 good faith challenge by a Party or Designating Party or dispute concerning whether a person who
22 is obligated under this Protective Order to complete the form did so properly and complied with
23 the representations in the form and this Protective Order. If the parties are unable to resolve any
24 such disputes or challenges through a good faith meet and confer process, the challenging Party or
25 Designating Party may seek appropriate relief from this Court.

ALEXANDER, ET AL. v. LVMPD, ET AL.

Case No. 2:24-cv-00074-APG-NJK

IT IS SO STIPULATED this 11th day of March, 2024.

MARQUIS AURBACH

BREEDEN & ASSOCIATES, PLLC

By: /s/ Craig R. Anderson
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Kerry Kubla, Brice Clements, Alex
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Attorney for Plaintiff

ORDER

IT IS SO ORDERED THIS 12 day of March, 2024.


United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____, have read in its entirety and understand the Protective Order that was issued by the United States District Court, for the District of Nevada on _____, 2023, in the case of *LATIA ALEXANDER, individually as heir of ISAIAH T. WILLIAMS, and in her capacity as Special Administrator of the Estate of ISAIAH T. WILLIAMS v. LVMPD, et al.*, Case No. 2:24-cv-00074-APG-NJK. I agree to comply with and to be bound by all terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order that any person entity except in strict compliance with the provisions of this Order. Further, I solemnly promise that I will not offer to sell, advertise or publicize that I have obtained any Protected Material subject to this Protective Order.

At the conclusion of this matter, I will return all Protected Material which came into my possession to counsel for the party from whom I received the Protected Material, or I will destroy those materials. I understand that any Confidential Information contained within any summaries of Protected Material shall remain protected pursuant to the terms of this Order.

I further agree to submit to the jurisdiction of the United States District Court, for the District of Nevada for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

I certify under the penalty of perjury that the foregoing is true and correct.

Date: _____

City and State where signed: _____

Printed name: _____

Address: _____

Signature: _____